

## Amendment in the Nature of a Substitute to H.R. 3609

### Section-by-Section Explanation

*Sec. 1. Short Title.* Section 1 sets forth the short title of the bill as the “Emergency Home Ownership and Mortgage Equity Protection Act of 2007.”

*Sec. 2. Definitions.* Section 101 of title 11 of the United States Code defines various terms used in the Bankruptcy Code. Section 2 amends section 101 to define two types of mortgages. First, it defines a “nontraditional mortgage” as a security interest in the debtor’s principal residence<sup>1</sup> that secures a debt for a loan that at any period during the term of the loan provides for the deferral of the payment of principal or interest by permitting periodic payments that do not cover the full amount of interest due or that cover only the interest rate. The definition does not include a home equity line of credit that is in a subordinate loan position or a reverse mortgage. This definition is derived from a statement of Interagency Guidance on Nontraditional Mortgage Product Risks issued by the Office of the Comptroller of the Currency, the Federal Reserve System’s Board of Governors, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration last year.<sup>2</sup>

Second, section 2 defines a “subprime mortgage” as a security interest in the debtor’s principal residence that secures a debt for a loan that has an annual percentage rate that is greater than either of two amounts, depending on whether the loan is secured by a first mortgage or first deed of trust or by a subordinate mortgage or subordinate deed of trust. This definition is largely derived from the Mortgage Reform and Anti-Predatory Lending Act of 2007, legislation that was passed by the U.S. House of Representatives on November 15, 2007.<sup>3</sup>

A loan secured by a first mortgage or first deed of trust is a “subprime mortgage” if the loan’s annual percentage rate of interest exceeds three percent plus the yield on United States Treasury securities having comparable periods of maturity.

A loan secured by a subordinate mortgage or subordinate deed of trust is a “subprime mortgage” if the loan’s annual percentage rate of interest exceeds five percent plus the yield on United States Treasury securities having comparable periods of maturity.

Without regard to whether either loan is subject to or reportable under the Home Mortgage Disclosure Act,<sup>4</sup> the difference between the annual percent rate of such loan and yield on United States Treasury securities having comparable periods of maturity must be determined

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<sup>1</sup>Section 101(13A) defines the term “debtor’s principal residence.” 11 U.S.C. § 101(13A).

<sup>2</sup>Interagency Guidance on Nontraditional Mortgage Product Risks – Final Guidance, 71 Fed. Reg. 58609-18 (Oct. 4, 2006), at <http://www.fdic.gov/regulations/laws/federal/2006/06noticeFINAL.html>.

<sup>3</sup>H.R. 3519, 110<sup>th</sup> Cong. (2007).

<sup>4</sup>Pub. L. No. 94-200, 89 Stat. 1125 (1976).

using the procedures and calculation methods applicable to loans that are subject to the reporting requirements of such Act, except that such yield shall be determined as of the 15<sup>th</sup> day of the month preceding the month in which a completed application is submitted for such loan.

If either loan provides for a fixed interest rate for an introductory period and then resets or adjusts to a variable interest rate, the determination of the annual percentage rate is based on the greater of the introductory rate and the fully indexed rate. For purposes of this definition, the term “fully indexed rate” means the prevailing index rate on a residential mortgage loan at the time the loan is made.

*Sec. 3. Delay of Counseling Requirement When Houses Are in Foreclosure.* Section 109(h) of title 11 of the United States Code sets forth the requirement that a debtor who is an individual must ordinarily have received credit counseling from an approved agency before he or she may file for bankruptcy relief. Section 3 amends section 109(h) to provide that a chapter 13 debtor may satisfy this requirement within 30 days after the bankruptcy case is filed if he or she submits to the court a certification that the debtor has received notice that the holder of a claim secured by the debtor’s principal residence may commence a foreclosure on the debtor’s principal residence. A court is authorized under this provision to extend this period for 15 days for cause. This temporary deferral of the credit counseling provision applies to a case under chapter 13 commenced during the seven-year period beginning on the effective date of H.R. 3609.

*Sec. 4. Authority To Modify Certain Mortgages.* Section 1322(b) of title 11 of the United States Code sets forth provisions that a chapter 13 plan may contain. In pertinent part, section 1322(b)(2) provides that a chapter 13 plan may modify the rights of holders of secured claims, but not a claim secured only by a security interest in real property that is the debtor’s principal residence. Section 4 amends section 1322(b) to add a provision providing that notwithstanding section 1322(b)(2) and otherwise applicable nonbankruptcy law, a claim secured by a nontraditional or subprime mortgage on the debtor’s principal residence may be modified under certain circumstances.

First, the bankruptcy case must have been commenced within the seven-year period beginning on the effective date of H.R. 3609. Second, such claim must be for a debt incurred during the period beginning on January 1, 2000 and ending on the effective date of H.R. 3609. Third, the mortgage must be subject of a notice that a foreclosure may be initiated. Fourth, the debtor’s current monthly income reduced by the amounts determined in accordance with section 707(b)(2)(A)(ii), (iii), and (iv) and section 707(b)(2)(B) (other than amounts scheduled as contractually due to the mortgagee and any additional payments necessary to maintain possession of such residence) is insufficient to enable the debtor to cure all defaults on such claim and maintain all payments while the case is pending as provided in section 1322(b)(5).

Should these criteria be satisfied, section 4 provides that a chapter 13 plan may modify a nontraditional or subprime mortgage in certain respects. First, the plan may reduce such claim to equal the value of the debtor’s property interest securing such claim. Second, the plan may waive any otherwise applicable early repayment or prepayment penalties. Third, if the mortgage has an adjustable rate of interest, the plan may prohibit, reduce, or delay adjustments to such rate applicable on and after the date on which such plan is filed. Fourth, the plan may extend the

repayment period for a period that is the longer of 30 years (reduced by the period for which the loan has been outstanding) or the remaining term of such loan, beginning on the date of the order for relief under chapter 13. Fifth, the plan may provide for the payment of interest accruing after the order for relief under chapter 13 at an annual percentage rate calculated at a fixed annual percentage rate in an amount equal to then most recently published annual yield on conventional mortgages published by the Federal Reserve System's Board of Governors, as of the applicable time set forth in the rules of the Board, plus a reasonable premium for risk.

*Sec. 5. Combating Excessive Fees.* Section 5 amends section 1322(c) of title 11 of the United States Code to provide that the debtor, the debtor's property, and property of the estate are not liable for certain fees, costs, or charges incurred while the case is pending that arise from a security interest that is secured by the debtor's principal residence, under specified circumstances. Such claims are disallowed unless the claim holder files with the court notice of such claim before the earlier of either one year after such claim is incurred or 60 days before the case is closed. In addition, the claim must be lawful under applicable nonbankruptcy law, reasonable, and provided for in an agreement secured by such security interest. Further, the claim must be secured by property having a value that is greater than the amount of the claim securing such claim, including such fees, costs, or charges.

Section 5 provides that the failure of a party to give the required notice shall be deemed to be a waiver of any claim for such fees, costs, or charges for all purposes. Any attempt to collect such fees, costs, or charges constitutes a violation of section 524(a)(2) (discharge injunction) or section 362(a) (automatic stay). This provision further provides that a plan may provide for the waiver of any prepayment penalty on a claim secured by the debtor's principal residence.

*Sec. 6. Confirmation of Plan.* Section 1325 of title 11 of the United States Code sets forth various criteria for confirmation of a chapter 13 plan. Section 6 amends section 1325 in two respects. First, it provides that the holder of a claim whose rights are modified pursuant to section 1322(b)(11) retains its lien until the later of: (1) the payment of such claim as reduced or modified, or (2) discharge under section 1328.

In addition, section 6 provides that if the plan modifies a claim in accordance with section 1322(b)(11), the court must find that such modification is in good faith.

*Sec. 7. Discharge.* Section 1328 of title 11 of the United States Code sets forth the requirements for discharge. Section 7 amends section 1328(a) to clarify that a claim modified under section 1322(b)(11) is not discharged to the extent of the unpaid portion of the claim as reduced.

*Sec. 8. Study and Report by Government Accountability Office.* Section 8 directs the Comptroller of the United States to conduct a study to determine the impact of the amendments made by sections 2 through 7 of H.R. 3609. The report must be submitted to Congress no later than 180 days after the date of enactment of the bill.

*Sec. 9. Study and Report by Executive Office for United States Trustees.* Section 9 directs the Director of the Executive Office for United States Trustees to conduct a study to determine the

impact of the amendments made by sections 2 through 7 of H.R. 3609. The report must be submitted to Congress no later than 180 days after the date of enactment of the bill.

*Sec. 10. Effective Date; Application of Amendments.* Section 10(a) provides that the Act and the amendments made by it, except as provided in subsection (b), take effect on the Act's date of enactment. Section 10(b) provides that the amendments made by the Act apply only to cases commenced under title 11 of the United States Code on or after the Act's date of enactment.